



Neutral Citation Number 2023:DHC:4879-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 13.07.2023

+ W.P. (C) 9933/2018, CM APPL. 20748/2022
KAMAL KUMAR SINGH Petitioner

versus

UNION OF INDIA & ORS Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Anil Singhal, Advocate

For the Respondent: Mr. Jitesh Vikram Srivastava, Advocate (Senior Panel Counsel), Mr. Theepa Murugesan (GP) for UOI & Mr. P.V. Srivastava, Advocate

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 18.11.2016 and order dated 19.01.2018 to the extent that the period intervening between 12.01.2016 and 01.11.2016 was treated as extraordinary leave and



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seeks a direction that the said period be treated as spent on duty for all contents and purposes with all consequential benefits.

2. Learned counsel for petitioner submits that petitioner was wrongfully retired on the ground of physical unfitness w.e.f. 12.01.2016. Subsequently, petitioner was reinstated in service on 01.11.2016 on the ground that his termination was contrary to the rule position and that the Medical Board by which he was declared unfit, had not been properly convened and that the procedure as prescribed under Rule 25 of BSF Rules 1969 was not followed. He submits that despite reinstatement, petitioner has been denied salary and benefits for the said period.

3. Learned counsel appearing for the respondent contends that the order of reinstatement dated 06.10.2016 directed that period of absence of petitioner from the date of his retirement till his re-joining would be regularized in terms of Fundamental Rule 54 (5). He submits that in terms of Fundamental Rule 54 (5) since the petitioner was absent from duty consequent to his retirement, the period is not to be treated as spent on duty unless the competent authority so directs.

4. Petitioner had joined the BSF as constable on 13.10.1993. On 11.01.2016, petitioner was made to retire w.e.f. 12.01.2016 on the ground of physical unfitness. On representation of the petitioner, the case was re-examined and the subject order dated 06.10.2016 was passed wherein it was noticed that Unit had not followed the due procedure as prescribed under Rule 25 of BSF Rules, before issuing



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the retirement order and consequently, the competent authority found the order to be not sustainable. Order was accordingly set aside. Petitioner thereafter rejoined on 01.11.2016 when he was reinstated in service. It is informed that petitioner thereafter served for nearly six years after his reinstatement when he was once again retired on medical ground.

5. Fundamental Rule 54 reads as under:-

F.R 54. (1) When a Government servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal review or would have been so re-instated 9 [but for his retirement on superannuation, while under suspension or not], the authority competent to order re-instatement shall consider and make a specific order:-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceeding his dismissal, removal or compulsory retirement, as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order re-instatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be: Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representations 10 [within 60 days from the date on which the communication in this regard is



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served on him] and after considering the representation, if any submitted by him, direct for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount 11 [not being the whole] of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceeding dismissal, removal or compulsory retirement, as the case may be shall be treated as a period spent on duty for all purposes.

(4) In the cases other than those covered by sub-rule (2) including the cases where the order of dismissal, removal or compulsory retirement from service is set aside by the Appellate or Reviewing Authority solely on the ground of non-compliance with the requirements of Clause (2) of Article 311 of the Constitution and no further enquiry is proposed to be held, the Government servant shall subject to the provision of sub-rules (6) and (7), be paid such 12 [amount (not being the whole) of the pay and allowances] to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period 13 [which in no case shall exceed sixty days from the date on which the notice has been served] as may be specified in the notice:

[Provided that any payment under this sub-rule to a Government servant {other than a Government servant who is governed by the provisions of the Payment of Wages Act 1936 (4) of 1936} shall be restricted to a period of three years immediately preceeding the date on which orders for re-instatement of such Government servant are passed by the Appellate Authority or Reviewing Authority, of immediately preceding the date of retirement on superannuation of such Government servant, as the case may be.]

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension



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preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose: Provided that if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant. Note.- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary to the grant of- (a) extraordinary leave in excess of three months in the case of temporary Government servant, and (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) [The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 53.

(8) Any payment made under this rule to a Government servant on his re-instatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of re-instatement. Where the emoluments admissible under the rule are equal to or less than the emoluments earned during the employment elsewhere, nothing shall be paid to the Government servant.

6. Fundamental Rule 54 (1) contemplates that when a government servant, who has been dismissed, removed and compulsorily retired, is reinstated as a result of appeal or review, the competent authority shall consider and make specific order regarding the pay and allowance to be paid to the government servant for the period of his absence and



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also order whether the period should be treated as spent on duty or not. Fundamental Rule 54 (2) empowers the competent authority to pay full pay and allowance to the government servant if he is fully exonerated. However, if the authority feels that the proceedings have been delayed on account of reasons attributable to him then the said government servant may be denied the remuneration for such period of delay. The period of absence from duty in cases falling under Sub Rule 2 are to be treated as period spent on duty for all purposes as stipulated in FR 54 (3). Sub Rule 4 & 5 stipulate that in cases covered under Sub Rule 2 including cases where order of dismissal, removal or compulsorily retirement from service is set aside on the ground of non-compliance of Article 311 of the Constitution and no further inquiry is proposed to be held, the government servant is to be paid such amount (not being the whole) as the competent authority may determine.

7. Perusal of Fundamental Rule 54 shows that the nature of order contemplated i.e. dismissal, removal or compulsorily retirement and the expression ‘fully exonerated’ as used in Sub Rule 2 as also the contemplation of further inquiry under Sub Rule 4 & 5 clearly indicates that said Fundamental Rule would be applicable only where an order of punishment is passed against the government servant.

8. In the instant case, merely an order of retirement on medical grounds had been passed which, too, was subsequently set aside.



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9. It is also not the case of the respondent that petitioner was retired on account of any inquiry. Petitioner was not dismissed, removed or compulsorily retired pursuant to any inquiry or misconduct either. As noted earlier, petitioner was retired on the ground of his medical unfitness.

10. The counter-affidavit states that since petitioner was not fully exonerated, there was no question of grant of pay and allowances for the period of his absence.

11. We are unable to accept the contention of the respondent for the reason that exoneration by its ordinary meaning means absolving someone from blame or fault or wrong doing. The expression exoneration itself contemplates an inquiry or a finding of which somebody is absolved. In the instant case, there is no inquiry or wrongdoing alleged against the petitioner except to say that he was medically unfit. The medical unfitness of the petitioner was found to have been declared by not following the procedure prescribed under Rule 25 of BSF Rules 1969. In the instant case, since the respondents themselves set aside the Medical Board proceedings which declared the petitioner as unfit and directed reinstatement of the petitioner in service, there was no question of petitioner being fully exonerated or otherwise.

12. Since the respondent had wrongfully retired the petitioner, he could not serve during the period 11.01.2016 to 01.11.2016 when he



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was taken back on rolls on reinstatement. Petitioner cannot be faulted or denied the salary and benefits for the said period.

13. Petitioner cannot be also faulted with for the above wrongful action of the respondents for not taking any work from him for the intervening period. Respondents cannot apply the principle of “no work, no pay” to the facts of this case.

14. Accordingly, the action of respondents treating the intervening period from 11.01.2016 to 01.11.2016 as extraordinary leave and denying the petitioner salary and consequential benefits for the said period are set aside. It is directed that the intervening period 11.01.2016 to 01.11.2016 shall be treated as period spent on duty for all intents and purposes and all the salary and consequential benefits for the said period shall be paid to the petitioner. It is, however, clarified that in case petitioner has been paid any amount towards pension during the said period, said amount shall be duly adjusted at the time of computing the amount for the said intervening period.

15. Petition is allowed in the above terms. Respondents shall pay the amount to the petitioner within a period of four months from today.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

JULY 13, 2023/dr